A

DYNAMIC PLANTATIONS BHD

v.

YB MENTERI SUMBER MANUSIA & ANOR

B

FEDERAL COURT, PUTRAJAYA
ZAKI TUN AZMI CJ
ZULKEFLI MAKINUDIN FCJ
MOHD GHAZALI YUSOFF FCJ
[CIVIL APPEALS NOS: 01(f)-8-2008(W) &
C 01(f)-7-2008(W)]
7 JANUARY 2010

LABOUR LAW: *Industrial dispute - Recognition of trade union - Reference by Minister of dispute over recognition to Industrial Court for*
D *adjudication as a trade dispute over parties' failure to conclude a collective agreement when second respondent neither sought nor obtained recognition from appellant - Whether Minister acted in excess of jurisdiction and/or committed an error of law - Industrial Relations Act 1967, ss. 2, 9, 18, 26, 33B(1)*

E

LABOUR LAW: *Industrial Court - Reference by Minister - Reference by Minister of dispute over recognition to Industrial Court for adjudication as a trade dispute over parties' failure to conclude a collective agreement when second respondent neither sought nor obtained recognition from*
F *appellant - Whether Minister acted in excess of jurisdiction and/or committed an error of law - Industrial Relations Act 1967, ss. 2, 9, 18, 26, 33B(1)*

LABOUR LAW: *Industrial Court - Award - Award made by way of parties' consent - Whether rendered them final and conclusive and not*
G *open to challenge in any court - Industrial Relations Act 1967, s. 33B(1)*

LABOUR LAW: *Trade union - Recognition - Recognition by conduct - Whether appellant by conduct recognised second respondent as a trade union of its employees - Binding collective agreement - Industrial Relations*
H *Act 1967, s. 9*

LABOUR LAW: *Trade union - Recognition - Policy and purpose of Industrial Relations Act 1967 in respect of statutory procedure of recognition - Recognition cannot be withdrawn once given*

I

LABOUR LAW: *Trade dispute - Definition of - Whether complaint by second respondent a trade dispute - Jurisdiction of Minister to refer matter to Industrial Court for resolution - Industrial Relations Act 1967, ss. 2, 18, 26*

The appellants were members of an employer trade union known as Malayan Agricultural Producers Association ('MAPA') since 1983. They were both granted leave by this court to appeal against the decision of the Court of Appeal on the following question: whether the first respondent acted in excess of jurisdiction and/or committed an error of law when he referred the dispute over recognition to the Industrial Court for adjudication as a trade dispute under s. 26(2) of the Industrial Relations Act 1967 ('IRA') over the failure of the parties to conclude a collective agreement when the second respondent had neither sought nor obtained recognition from the appellants pursuant to the provisions of s. 13(1) read together with s. 9(2) of the IRA. The second respondent raised a preliminary objection on the issue as to the status of both the appellants' appeals at this stage in view of the fact that after the High Court had refused the appellants' applications for judicial review, the appellants had by consent settled the matter (pursuant to the reference) in the Industrial Court *vide* Awards Nos. 317, 318 and 319 of 2005 ('the said Awards'). It was submitted that if these two appeals were allowed, this court would be ignoring the effect of s. 33B(1) of the IRA. (The present two appeals were heard together and all parties agreed that the decision in Appeal No. 01(f)-8-2008(W) would bind Appeal No. 01(f)-7-2008(W); the "appellant" in the former would henceforth be referred to in place of the "appellants".)

Held (dismissing both appeals with costs)
Per Zulkefli Makinudin FCJ delivering the judgment of the court:

(1) This court's decision on the present appeals would not have any effect on the said Awards. The question framed for determination did not relate to the said Awards, but focused on the principal issue of whether the Minister of Human Resources as the first respondent had jurisdiction to refer the purported dispute over refusal by the appellant to negotiate a collective agreement with the second respondent to the Industrial Court for adjudication as a "trade dispute" under s. 26(2) of the IRA when the second respondent had neither sought nor obtained recognition from the appellant under the provisions of the IRA. At any rate, the fact that the said Awards were made by way of both parties' consent before the Industrial Court rendered them final and conclusive and not

A open to challenge in any court under s. 33B(1) of the IRA. The second respondent's preliminary objection was, therefore, dismissed. (para 6)

(2) On the factual circumstances of the present case, the B appellant had by conduct recognised the second respondent as a trade union of its employees. The collective agreements were negotiated and entered into by MAPA on behalf of the appellant, and the appellant was expressly named as a consenting member of MAPA in them. There was not just one C collective agreement but a series of five in succession, and the appellant's contention that it never recognised the second respondent though it was bound by such collective agreements at the material time was untenable. The appellant had already recognised the second respondent by entering into a binding D collective agreement with it without the need to comply with the formality of s. 9 of the IRA. *National Union of Gold, Silver & Allied Trades v. Albury Bros Ltd* (refd). (para 14)

(3) It is the policy and purpose of the IRA in respect of its E statutory procedure of recognition that once recognition is given, it cannot be withdrawn. *Kennesion Brothers Sdn Bhd v. Construction Workers Union* (foll). (para 18)

(4) The definition of a trade dispute is very wide. If a dispute is connected with employment, it is a trade dispute. This is F sensible because the objective of the IRA is to confer on the Industrial Court power to sort out issues between employee and employer. Therefore, based on the provisions of ss. 2, 18 and 26 of the IRA, it was clear that the second respondent's complaint was a trade dispute. It was a trade dispute on the G issue of a failure to reach a collective agreement between the parties and not on the issue of recognition. The first respondent thus had the jurisdiction to refer the matter to the Industrial Court as such for resolution. (para 21)

H **(5)** For the reasons stated above, the question posed in the present two appeals would be answered in the negative. (para 22)

Bahasa Malaysia *Translation Of Headnotes*

I Perayu-perayu merupakan ahli-ahli satu kesatuan sekerja majikan yang dikenali sebagai Malayan Agricultural Producers Association ('MAPA') semenjak 1983. Kedua-dua mereka telah diberi

kebenaran oleh mahkamah ini untuk merayu terhadap keputusan Mahkamah Rayuan atas soalan yang berikut: sama ada responden pertama bertindak melampaui bidangkuasa dan/atau melakukan suatu kekhilafan undang-undang apabila beliau merujuk pertikaian atas pengiktirafan ke Mahkamah Perusahaan untuk diputuskan sebagai satu pertikaian perdagangan di bawah s. 26(2) Akta Perhubungan Perusahaan 1967 ('APP') atas kegagalan pihak-pihak untuk membuat satu perjanjian kolektif apabila responden kedua tidak menuntut atau memperolehi pengiktirafan dari perayu-perayu mengikuti peruntukan-peruntukan s. 13(1) dibaca bersama dengan s. 9(2) APP. Responden kedua membangkitkan satu bantahan awalan atas isu berhubung dengan status kedua-dua rayuan perayu-perayu di peringkat ini memandangkan bahawa selepas Mahkamah Tinggi telah menolak permohonan-permohonan perayu-perayu untuk semakan kehakiman, perayu-perayu telah bersetuju menyelesaikan perkara itu (mengikuti rujukan tersebut) dalam Mahkamah Perusahaan melalui Award-award No. 317, 318 dan 319 Tahun 2005 ('Award-award tersebut'). Ia telah dihujahkan bahawa jika kedua-dua rayuan ini dibenarkan, mahkamah ini tidak mengendahkan kesan s. 33B(1) APP. (Kedua-dua rayuan semasa dibicara bersama dan semua pihak bersetuju bahawa keputusan dalam Rayuan No. 01(f)-8-2008(W) akan mengikat Rayuan No. 01(f)-7-2008(W); "perayu" dalam rayuan pertama akan mulai sekarang dirujuk sebagai ganti "perayu-perayu".)

Diputuskan (menolak kedua-dua rayuan dengan kos)
Oleh Zulkefli Makinudin HMP menyampaikan penghakiman mahkamah:

(1) Keputusan mahkamah ini dalam rayuan-rayuan semasa tidak akan memberi apa-apa kesan ke atas Award-award tersebut. Soalan yang perlu diselesaikan tidak berkaitan dengan Award-award tersebut, tetapi memfokus atas isu utama sama ada Menteri Sumber Manusia sebagai responden pertama mempunyai bidangkuasa untuk merujuk pertikaian yang dikatakan mengenai penolakan perayu untuk merundingkan satu perjanjian kolektif dengan responden kedua ke Mahkamah Perusahaan untuk diputuskan sebagai satu "pertikaian perdagangan" di bawah s. 26(2) APP apabila responden kedua tidak menuntut atau memperolehi pengiktirafan dari perayu di bawah peruntukan-peruntukan APP. Walau apapun, fakta bahawa Award-award tersebut telah dibuat dengan persetujuan kedua-dua pihak di hadapan Mahkamah

Perusahaan menjadikan mereka terakhir dan muktamad dan tidak boleh dicabar dalam mana-mana mahkamah di bawah s. 33B(1) APP. Bantahan awalan responden kedua, oleh itu, ditolak.

(2) Berdasarkan keadaan-keadaan faktual kes semasa, perayu telah melalui kelakuan mengiktirafkan responden kedua sebagai kesatuan sekerja pekerja-pekerjanya. Perjanjian-perjanjian kolektif telah dirundingkan dan dilaksanakan oleh MAPA atas pihak perayu, dan perayu telah dinamakan dengan nyata sebagai ahli rela MAPA di dalam mereka. Bukan sahaja terdapat satu perjanjian kolektif tetapi ada suatu siri lima berturut-turut, dan hujahan perayu bahawa ia tidak mengiktirafkan responden kedua walaupun ia diikat oleh perjanjian-perjanjian sebegitu pada masa yang material tidak dapat diterima. Perayu telahpun mengiktirafkan responden kedua dengan melaksanakan satu perjanjian kolektif mengikat dengannya tanpa keperluan memenuhi formaliti s. 9 APP. *National Union of Gold, Silver & Allied Trades v. Albury Bros Ltd* (dirujuk).

(3) Ia merupakan polisi dan tujuan APP berhubung dengan prosedur statutorinya tentang pengiktirafan bahawa selepas pengiktirafan diberi, ia tidak boleh ditarik balik. *Kennesion Brothers Sdn Bhd v. Construction Workers Union* (diikuti).

(4) Definasi pertikaian perdagangan adalah sungguh luas. Kalau suatu pertikaian berhubung dengan pekerjaan, ia adalah satu pertikaian perdagangan. Ini ialah wajar kerana objektif APP adalah untuk memberi Mahkamah Perusahaam kuasa untuk menyelesaikan isu-isu di antara pekerja dan majikan. Oleh yang demikian, berdasarkan peruntukan-peruntukan ss. 2, 18 dan 26 APP, ia jelas bahawa aduan responden kedua merupakan suatu pertikaian perdagangan. Ia adalah pertikaian perdagangan atas isu kegagalan mencapai suatu perjanjian kolektif di antara pihak-pihak dan bukan atas isu pengiktirafan. Responden pertama oleh itu mempunyai bidangkuasa untuk merujuk perkara tersebut ke Mahkamah Perusahaan seperti itu untuk diselesaikan.

(5) Atas sebab-sebab yang dinyatakan di atas, soalan yang ditanya dalam kedua-dua rayuan semasa akan dijawab secara negatif.

Case(s) referred to:
Kennesion Brothers Sdn Bhd v. Construction Workers Union [1989] 2 MLJ 419 ***(foll)***
National Union of Gold, Silver & Allied Trades v. Albury Bros Ltd [1978] ICR 62 ***(refd)***

Legislation referred to:
Industrial Relations Act 1967, ss. 2, 9(2), 13(1), (7), 17(2), 18(1), 26(2), 33B(1)
Trade Unions Act 1959, s. 12

Other source(s) referred to:
Richard Kidner, *Trade Union Law*, 2nd edn, p 13

For the appellants - C Sri Kumar; M/s Kumar Partnership
For the 1st respondent - Jamhirah Ali SFC
For the 2nd respondent - B Lobo; M/s Lobo & Assoc

[Editor's note: For the Court of Appeal judgment, please see Dynamic Plantations Bhd v. YB Menteri Sumber Manusia & Anor And Another Appeal [2008] 6 CLJ 833.]

Reported by Suresh Nathan

JUDGMENT

Zulkefli Makinudin FCJ:

Introduction

[1] These two appeals were heard together and it was agreed by all parties that the decision in Appeal No. 01(f)-8-2008(W) will bind Appeal No. 01(f)-7-2008(W). The appellant in Appeal No. 01(f)-7-2008(W) is IOI Corporation Berhad. The appellant in Appeal No. 01(f)-8-2008(W) is Dynamic Plantations Berhad. Both the appellants are public listed companies which own palm oil and rubber plantations and were members of an employer trade union known as Malayan Agriculture Producers Association ("MAPA") since 1983. On 17 July 2008 this court granted to both the appellants leave to appeal against the decision of the Court of Appeal on the following question:

> Whether the first respondent acted in excess of jurisdiction and/or committed an error of law when he referred the dispute over recognition to the Industrial Court for adjudication as a trade dispute under section 26(2) of the Industrial Relations Act, 1967

("the IRA") over the failure of parties to conclude a collective agreement when the second respondent had neither sought nor obtained recognition from the appellant pursuant to the provisions of section 13(1) read together with section 9(2) of the IRA.

[2] For the purpose of argument in the appeal learned counsel for both the appellants stated that he would be referring to the appeal records of the appellant in Appeal No. 01(f)-8-2008(W).

Background Facts

[3] The relevant background facts of the case for Appeal No. 01(f)-8-2008(W) are as follows:

(1) The appellant was a member of MAPA. MAPA is a trade union of employers in the plantation industry registered under s. 12 of the Trade Unions Act 1959.

(2) The appellant withdrew from membership of MAPA on 23 May 2000 and ceased to be a member of MAPA thereafter.

(3) Prior to the appellant's withdrawal as a member of MAPA on 23 May 2000, MAPA had negotiated and entered into five (5) separate collective agreements with the second respondent, the last of which was the 1997 Collective Agreement which was effective for the period 1 January 1997 to 1 January 2000. The appellant was bound by these collective agreements by reason of the fact that it was a member of MAPA at the material time.

(4) The appellant has never directly conferred recognition on the second respondent and neither has it been sought and obtained by the second respondent.

(5) On 12 June 2000, after its withdrawal from membership with MAPA, the appellant received an invitation from the second respondent pursuant to s. 13 of the IRA to commence collective bargaining with a view to concluding a collective agreement concerning the wages and terms and conditions of employment of harvesters.

(6) By a letter dated 21 June 2000, the appellant rejected the invitation on the basis that it had not granted recognition to the second respondent to enter into negotiations pertaining to the fresh collective agreement.

(7) By a letter dated 26 June 2000, the second respondent took the position that it did not agree with the appellant's contention pertaining to the issue of recognition and referred the matter to the first respondent pursuant to s. 18(1) of the IRA.

(8) Having failed to reconcile the dispute between the appellant and the second respondent, on 29 August 2000 the first respondent referred the dispute directly to the Industrial Court under s. 26(2) of the IRA ("the first respondent's Decision") as a "trade dispute" as distinct from a dispute over recognition.

(9) The appellant applied for an order of *certiorari* to quash the first respondent's decision *vide* Kuala Lumpur High Court Application for Judicial Review No. R2-25-96-2000 ('the JR Application").

(10) On 22 April 2002, the High Court dismissed the JR Application.

(11) The appellant appealed against the decision of the High Court to the Court of Appeal *vide* Civil Appeal No. W-01-30-2002 ("the appeal").

(12) The appeal was heard on 14 April 2008 and was dismissed with costs on 17 April 2008 by a majority of 2:1.

Preliminary Objection

[4] Learned counsel for the second respondent at the outset of the hearing before us raised a preliminary objection on the issue as to the status of both the appellants' appeals at this stage in view of the fact after the High Court had refused the appellants' JR application, the appellants had by consent settled the matter (pursuant to the said reference) in the Industrial Court *vide* Industrial Court Award Nos. 317, 318 and 319 of 2005 ("the said awards"). The said awards were expressed to be subjected to the outcome of the Court of Appeal's decision in this case. It is the contention of the second respondent that the said awards can be varied only by any Court of Appeal's decision and the Court of Appeal has not done that.

[5] Learned counsel for the second respondent also contended that in the event that this court allows these two appeals, this court will be ignoring the effect of provision of the said s. 33B(1) of the IRA. Section 33B(1) of the IRA provides as follows:

> (1) Subject to this Act ..., an award, decision or order of the Court under this Act (including the decision of the Court whether to grant or not to grant an application under section 33A(1)) shall be final and conclusive, and shall not be challenged, appealed against, reviewed, quashed or called in question in any court.

To the second respondent the statement in the said Awards is final and conclusive and the appellants by these appeals are trying to quash the said awards by the "back door". The second respondent further contended that there is no live issue to be decided between the parties and this court will not decide on matters which have become academic. On this ground alone learned counsel for the second respondent submitted that the appeal of both the appellants should be dismissed.

[6] With respect, we could not agree with the above contention of the second respondent. It is our considered view that the decision of this court on the two appeal cases before it will not have any effect on the said awards entered into by the parties. The question framed for the determination of this court does not relate to the said awards. It focuses on the principal issue of whether the Minister of Human Resources as the first respondent has jurisdiction to refer the purported dispute over refusal by the appellant to negotiate a collective agreement with the second respondent to the Industrial Court for adjudication as a "trade dispute" under s. 26(2) of the IRA when the second respondent had not sought nor obtained recognition from the appellant under the provision of the IRA. At any rate in our view the fact that the said awards were made by way of consent of both parties before the Industrial Court is therefore clear that the awards made are final and conclusive and shall not be challenged, appealed against, reviewed, quashed or called in question in any court under s. 33B(1) of the IRA. Based on the circumstances of this case, the preliminary objection on the issue raised by the second respondent is therefore dismissed.

The Appellant's Contention

[7] We shall now deal with the merits of the appellant's case. It is the contention of the appellant that before the second respondent can invite the appellant to collective bargaining, the second respondent must first be recognized by the appellant. The appellant further contended that since the second respondent had not sought recognition from the appellant and neither has the appellant granted any recognition to the second respondent under s. 9 of the IRA, a trade dispute over the failure to conclude a collective agreement could not have arisen to permit the first respondent to refer the dispute to the Industrial Court.

[8] Learned counsel for the appellant submitted that the question framed for our determination brings into focus the mandatory character or otherwise of the recognition pre-condition in s. 13(1) of the IRA and the obligatory character of the process of seeking and obtaining recognition under s. 9(2) of the IRA. Section 13(1) of the IRA provides as follows:

> (1) Where a trade union of workmen has been **accorded** recognition by an employer ...:
>
> (a) the trade union of workmen may invite the employer ... to commence collective bargaining; or
>
> (b) .... (emphasis added)

Section 9(2) of the IRA provides as follows:

> (2) Subject to subsection (1), a trade union of workmen **may** serve on an employer or on a trade union of employers in writing in the prescribed form a claim for recognition in respect of the workmen or any class of workmen employed by such employer or by the members of such trades union of employers. (emphasis added)

[9] It is the appellant's case that the use of the word "accorded" under s. 13(1) of IRA must be interpreted to mean that recognition had been sought and obtained. To the appellant recognition is pivotal because the IRA provides a statutory process by which employers and employees can enter into collective bargaining. Section 9 of the IRA provides the strict procedure how recognition is to be secured and obtained. It is necessarily strict because it enables a trade union to negotiate and determine the terms and conditions of employment. Further, the process enables

employers to satisfy themselves that the union claiming recognition is truly representative of the majority of the particular class of employees.

[10] As regards the past collective agreements entered into by the appellant during the appellant's tenure of membership with MAPA, the appellant maintained its contention that they did not confer recognition upon the second respondent. However, the appellant stated that it was not contesting the validity of these past collective agreements.

Decision

[11] We are of the view the majority judgment of the Court of Appeal was right in arriving at the decision that although the second respondent had not sought recognition from the appellant under s. 9 of the IRA, but by participating in MAPA as a member and agreeing to be bound by the terms and conditions of the collective agreements, the appellant has by conduct recognized the second respondent as a trade union of its employees for that category of work. On the need for strict compliance of s. 9 of IRA before recognition can be granted to the second respondent as contended by the appellant, we are in agreement with the finding of the majority judgment of the Court of Appeal that the word "may" appearing in s. 9(2) of the IRA allows a certain degree of flexibility for a trade union to be recognized. In other words, the statutory procedure for recognition of a trade union in s. 9(2) of the IRA is not the exclusive procedure for recognition. This contention is fortified by the fact that the said s. 13(1) of the IRA does not state "... where a trade union of workmen has been accorded recognition by an employer under s. 9 of the IRA."

[12] The common law recognizes that the act of recognition can be granted by the appellant to the second respondent by reference to conduct. On this point we would like to refer to a passage of the book *"Trade Union Law"* 2nd edn by Richard Kidner at p. 13 wherein it is stated as follows:

> The main problem in determining whether recognition has taken place is whether an employer has agreed to bargain. In most cases the employer and the union will have entered into a procedure agreement which defines the areas suitable for bargaining, the employees covered and the procedure to be followed. However, such a formal structure is not necessary and the difficult issue is the extent to which previous conduct can establish recognition.

[13] Still on the issue of recognition in the case of *National Union of Gold, Silver & Allied Trades v. Albury Bros Ltd.* [1978] ICR 62, Philips J. in delivering the judgment of the Employment Appeal Tribunal at p. 65 *inter alia* established the following propositions:

> First that recognition is a mixed question of fact and law; secondly that it requires mutuality, that is the employer acknowledges the role of the union and the union assents; thirdly that the agreement may be express or implied; fourthly that if it is said to be implied the acts relied on must be clear and unequivocal and (usually) involved a course of conduct over a period of time.

[14] Based on the factual circumstances of the present case, we are of the view that the appellant has by conduct recognized the second respondent as a trade union of its employees. The collective agreements were negotiated and entered into by MAPA on behalf of appellant. The appellant was expressly named as a consenting member of MAPA in the collective agreements. There was not just one collective agreement but a series of five in succession, each after the previous term has expired and replaced by a new collective agreement. The appellant's contention that though it was bound by such collective agreements at the material time and yet it has never recognized the second respondent is untenable. In our view the appellant has already recognized the second respondent by entering into a binding collective agreement with the second respondent without the need to comply with the formality of s. 9 of the IRA.

[15] The minority judgment of the Court of Appeal in dealing with the issues relating to collective agreement and recognition *inter alia* had this to say:

> ... During the pendency of its membership in MAPA and the pendency of the life span of the last collective agreement both parties are bound by the agreement between them. This issue must be made clear. Insofar as the terms of the last collective agreement are concerned, parties are bound by them and these would be incorporated in the terms of employment implied or express. They are good until the next collective agreement. If the new terms are to be had, then negotiations can only be initiated between the appellant and a 'recognized' trade union. The 'recognition' does not run in perpetuity. What does, however, are the terms of the collective agreement until they are substituted or amended with a new collective agreement ...

(See pp. 7-8 of the Supplementary Record of Appeal.)

[16] From the above minority judgment of the Court of Appeal the following points can be discerned:

(i) The collective agreement between the appellant and the second respondent runs in perpetuity.

(ii) During the currency of the collective agreement no question of recognition can arise.

(iii) That the "recognition" *vide* the collective agreement does not run in perpetuity.

[17] With respect, the minority judgment of the Court of Appeal in our view failed to address the question as to whether the collective agreement was in force despite the cessation of the appellant, on 23 May 2000 as members of MAPA. On this question we would answer it to be in the affirmative. Article 2 Part 1 of the collective agreement provides for the collective agreement to run until superseded by a new collective agreement or an award of Industrial Court. Such an arrangement is also provided for under s. 17(2) of the IRA which reads:

> As from such date and for such period as may be specified in the collective agreement it shall be an implied term of the contract between the workmen and employers bound by the agreement that the rate of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with the agreement unless varied by a subsequent agreement or a decision of the Court.

The majority judgment of the Court of Appeal was therefore right in its finding that as there is no new collective agreement or a decision of the court to vary it, the collective agreement continues to be in force and the question of the second respondent not being recognized does not arise.

[18] It is also to be noted that it is the policy and purpose of the IRA in respect of its statutory procedure of recognition that once recognition is given, there can be no withdrawal of the recognition. On this point the Federal Court in the case of *Kennesion Brothers Sdn. Bhd. v. Construction Workers Union* [1989] 2 MLJ 419 at p. 421 had this to say:

> Once the employer has accorded the recognition, we agree with the learned Judge that there appears to be no provision in the Act enabling the employer to act unilaterally in withdrawing or revoking the recognition.

[19] On the issue of whether the first respondent has jurisdiction to treat the matter arising between the appellant and the second respondent as a "trade dispute" the minority judgment of the Court of Appeal held the view that the dispute over the refusal to engage in collective bargaining can only become a trade dispute by virtue of the deeming provision in s. 13(7) of the IRA. It also held that in the absence of recognition under section 9 of IRA, a union cannot issue an invitation under s. 13(1) of the IRA. As a result too, it further held there cannot be deemed a trade dispute under s. 13(7) which is capable of being reported under s. 18 – which in turn become the basis for conciliation under s. 18 and reference under s. 26(2). (See p. 28 of the Supplementary Record of Appeal).

[20] With respect, in our view the above reasoning of the minority judgment is not correct. Firstly, it is to be restated that recognition can also be granted by way of conduct of the parties and that recognition under s. 9 of IRA is not the exclusive procedure for recognition. Secondly, by reference to ss. 18 and 26 of IRA it will show that the first respondent had rightly referred the dispute directly to the Industrial Court under s. 26(2) of the IRA as a trade dispute as distinct from a dispute over recognition. Section 18 of the IRA is reproduced as follows:

> 18(1) Where a trade dispute exists or is apprehended, that dispute, if not otherwise resolved, may be reported to the Director General by:
>
> (a) An employer who is a party to the dispute or a trade union of employers representing him in the dispute; or
>
> (b) A trade union of workmen which is a party to the dispute.
>
> (2) The Director General shall consider any dispute reported to him under subsection (1) and take such steps as may be necessary or expedient for promoting an expeditious settlement thereof:
>
> Provided that where the dispute relates to the dismissal of a workman, the provisions of section 20 shall apply.
>
> (3) Where a trade dispute exists or is apprehended, which in his opinion is not likely to be settled by negotiation between the parties, the Director General may, if he deems it necessary in the public interest take such steps as may be necessary or expedient for promoting a settlement thereof whether or not the trade dispute has been reported to him.

(4) The steps taken by the Director General under subsection (2) or (3) shall include reference of the dispute for settlement to any appropriate machinery which already exists by virtue of an agreement between or applicable to the parties to the dispute, unless:

(a) the dispute has already been referred to such machinery and there has been a failure to reach a settlement; or

(b) in his opinion it is unlikely that the dispute will be promptly settled through such machinery.

(5) Where, after having taken the steps under subsection (2) or (3), the Director General is satisfied that there is no likelihood of the trade dispute being settled, he shall notify the Minister accordingly.

Section 26 provides as follows:

26(1) Where a trade dispute exists or is apprehended, the Minister may, if that dispute is not otherwise resolved, refer the dispute to the Court on the joint request in writing to the Minister by the trade union of workmen which is a party to the dispute and the employer who is a party to the dispute or a trade union of employers which is a party to the dispute.

(2) The Minister may of his own motion or upon receiving the notification of the Director General under section 18(5) refer any trade dispute to the Court if he is satisfied that it is expedient so to do:

Provided that in the case of a trade dispute in any Government service or in the service of any statutory authority, reference shall not be made except with the consent of the Yang di-Pertuan Agong or State Authority as the case may require.

(3) If there exists in any industry any arrangement for the settlement of trade disputes, made in pursuance of an agreement between an employer or a trade union of employers and a trade union of workmen, the Minister shall not refer the trade dispute to the Court in accordance with subsections (1) and (2) unless there has been a failure to obtain a settlement by means of those arrangements or in his opinion it is unlikely that the dispute will be expeditiously settled through such arrangements.

[21] A reference has also to be made to s. 2 of the IRA on the definition of "trade dispute" which *inter alia* provides as follows:

> … trade dispute means **any** dispute between an employer and his workmen which is **connected** with the employment … (emphasis added)

The definition of a trade dispute is very wide. If a dispute is connected with employment, it is a trade dispute. This is sensible because the objective of the IRA is to confer on the Industrial Court power to sort out issues between the employee and the employer. Therefore, based on the above provisions of ss. 18, 26 and 2 of the IRA, it is clear that the second respondent's complaint was a trade dispute. It was a trade dispute on the issue of a failure to reach a collective agreement between the parties and not on the issue of recognition. The first respondent therefore had the jurisdiction to refer the matter to the Industrial Court as such for resolution.

Conclusion

[22] For the reasons above stated we would answer the question posed in this appeal in the negative. The appeal by both the appellants is therefore dismissed with costs. We would herein make an order of costs for a sum of RM40,000 to be paid by the appellants to each of the two respondents in these two appeal cases totaling RM80,000. The deposit is to be paid to the respondents towards costs.